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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/535,186	03/27/2000	George McBride	CARDIOBEAT-1	3794
7590	12/24/2003		EXAMINER	
Donald J. Lenkszus PC P O Box 3064 Carefree, AZ 85377			KIM, PAUL L	
			ART UNIT	PAPER NUMBER
			2857	

DATE MAILED: 12/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/535,186	MCBRIDE ET AL.
<b>Examiner</b>	<b>Art Unit</b>	
Paul L Kim	2857	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 04 November 2003.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-20 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-20 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

13)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a)  The translation of the foreign language provisional application has been received.

14)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

1)  Notice of References Cited (PTO-892) 4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948) 5)  Notice of Informal Patent Application (PTO-152)  
3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_. 6)  Other: \_\_\_\_\_

**DETAILED ACTION**

1. The affidavit filed on August 16, 2002 under 37 CFR 1.131 is sufficient to overcome the Quy, Kumar et al, Zadrozny et al references.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 4-10, and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (US 5,307,263) in view of Brown et al (US 5,879,163).

With reference to claims 1 and 4, Brown (US 5,307,263) teaches a medical testing method comprising the steps of: providing and coupling a test sensor to a subject (fig. 1, part 16 & fig. 3, part 74), coupling the test sensors to an apparatus having access to a network (fig. 1, part 10), operating the apparatus to automatically obtain test measurement data from the test sensors (col. 10, lines 5-14), uploading the test measurement data via the network to a location remote from the subject (fig. 1, part 52 & 54 and col. 11, line 65 to col. 12, line 15), providing a server at a remote location (fig. 2, part 54), processing the measurement data at the central server to produce processed data (col. 12, lines 16-26), downloading the processed data from the server to the apparatus (col. 12, lines 26-28), and displaying the information (figs. 5-10 and col. 19, lines 52-61).

Brown (US 5,307,263) teaches the test apparatus having access to the network, but does not specify the network being an Internet. Brown et al (US 5,879,163) teaches a patient health monitoring system that communicates raw data to a remote server by Internet (col. 6, lines 49-54). It would have been obvious to one of ordinary skill in the art, at the time of the invention, to modify Brown (US 5,307,263), so that data is communicated via Internet as taught by Brown et al (US 5,879,163), so as to be able to communicate data through a common medium for cost efficiency.

With reference to claims 5-7, Brown (US 5,307,263) teaches a second apparatus being used to interact with the server (fig. 2, part 62).

With reference to claims 8 and 9, Brown (US 5,307,263) teaches a database storing processed data (col. 12, lines 53-55).

With reference to claim 10, Brown (US 5,307,263) teaches automatically storing processed data at different times (col. 15, lines 44-47).

With reference to claims 18-20, Brown (US 5,307,263) teaches providing multimedia means at the apparatus and using the interface to communicate test instructions to the subject (col. 8, lines 63+).

4. Claims 11-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (US 5,307,263) in view of Halpern et al.

Brown teaches automatically processing data obtained from the subject and transmitting the data to the second apparatus, but does not specify analyzing the data historically. Halpern et al teaches using an analysis program to analyze stored historical data obtained from a patient (col. 11, lines 21-26). Since Brown and Halpern et al are

both within the art of remote patient monitoring by network and because analyzing historical data is well known in the art, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to modify Brown, so that historical analysis is applied to collected data, as taught by Halpern et al, so as to derive the benefit of trend analysis of recorded data.

***Response to Arguments***

5. Applicant's arguments with respect to claims 1 and 4-20 have been considered but are moot in view of the new ground(s) of rejection.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Kim whose telephone number is 703-305-7468. The examiner can normally be reached on Monday-Thursday 10:00-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marc Hoff can be reached on 703-308-1677. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306 for regular communications and for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.

PK  
December 15, 2003

  
MARC S. HOFF  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2800